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Attorneys for Defendant
Samantha Marie Tainewasher

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
(Honorable Stanley A. Bastian)**

UNITED STATES OF AMERICA,
Plaintiff,
vs.
SAMANTHA MARIE
TAINEWASHER,
Defendant.

) NO. 1:21-CR-2029-SAB
)
)
) MOTION TO ALLOW FILING OF
) DEFENDANT'S REPLY TO THE
) GOVERNMENT'S RESPONSE
) MOTION IN LIMINE [ECF 45] AND
) DEFENDANT'S REQUEST FOR A
) DAUBERT HEARING

DATE: April 27, 2022
TIME: 11:00 A.M.

MOTION TO ALLOW FILING OF DEFENDANT'S REPLY
TO THE GOVERNMENT'S RESPONSE MOTION IN
LIMINE [ECF 45] AND DEFENDANT'S REQUEST FOR A
DAUBERT HEARING -

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1 **TO:** CLERK OF THE COURT, Eastern District of Washington;
 2 **AND TO:** MICHAEL J. ELLIS, Assistant United States Attorney; and
 3 **AND TO:** TIMOTHY J. OHMS, Assistant United States Attorney.

4 **COMES NOW SAMANTHA TAINEWASHER** by her attorneys, Richard A.
 5 Smith of ***Smith Law Firm*** and Douglas E. McKinley, Jr. of ***Law Office of Douglas***
 6 ***E. McKinley***, and moves the Court to allow Defendant to file her reply to the
 7 Government's response to motion in limine re: expert testimony [ECF 45].

8 **I. INTRODUCTION.**

9 The Government filed its Notice of Expert Testimony [ECF 32] on August 31,
 10 2021. After the filing the case was continued to January 3, 2022 [ECF 42]. The
 11 Defendant filed her Motion in Limine RE: Expert Testimony on November 18, 2021
 12 [ECF 43]. The Government filed its response [ECF 45] on November 24, 2021. The
 13 Defendant prepared her reply to the Government's response for filing and filed her
 14 Motion to Continue the Trial Date on November 29, 2021 [ECF 49]. The Court
 15 entered its order continuing the case to May 9, 2022, on December 2, 2021 [ECF 52].
 16 Through inadvertence and mistake, the defendant's reply was not filed. Defense
 17 Counsel Richard Smith believed the reply had been filed and was alerted to the fact
 18 the reply was not filed on April 11, 2022. The reply is filed with this motion to allow
 19 the late filing based upon inadvertence and mistake.

20 On March 30, 2022, the Defense filed its responses to Government's notices
 21 [ECF 54 and ECF 55]. The Government in turn filed its responses on April 6, 2022
 22 [ECF 57 and 58]. On April 4, 2022, Defense Counsel Richard Smith spoke by
 23 telephone with AUSA Michael Ellis and asked if Mr. Ellis intended to have Dr. Hail
 24 appear at the pre-trial hearing based upon his belief the Defendant's reply to the
 25 Government's response and request for *Daubert* hearing had been filed. Counsel

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1 agreed that if Dr. Hail's testimony were deemed necessary her appearance could be
2 scheduled at a later date. This conversation was based on Defense Counsel's belief
3 the reply had been filed and the AUSA's natural understanding based upon the only
4 pleadings filed at that time.

5 The reply was prepared in December and through mistake or inadvertence was
6 not filed at that time. The latest the reply should have been filed was March 30,
7 2022. Defense Counsel discovered the fact the pleading had not been filed while
8 preparing for the pre-trial hearing currently set for April 27, 2022. Counsel now
9 requests the Court allow the filing for hearing on April 27, 2022. As the pleading is a
10 reply to the Government's response [ECF 45] no further pleadings are required. The
11 Court can then determine the necessity for a *Daubert* hearing at the April 27, 2022
12 pre-trial conference consistent with Counsel's discussion, if it so chooses.
13

14 DATED this 11th day of April 2022.
15

16 Presented by:
17

18 /s/ Richard A. Smith
19 RICHARD A. SMITH, WSBA #15127
20 SMITH LAW FIRM

21 /s/ Douglas E. McKinley, Jr.
22 DOUGLAS E. McKINLEY, Jr.
23 WSBA #20806
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1
2 CERTIFICATE OF SERVICE
3

4 I hereby certify under penalty of perjury of the laws of the State of Washington
5 that on April 11, 2012, I electronically filed the foregoing with the Clerk of the Court
6 using the CM/ECF System which in turn automatically generated a Notice of
7 Electronic Filing to all parties in the case who are registered users of the CM/ECF
system.

8
9 _____
10 /s/ *Lugene Borba*
11 Lugene Borba
12 Paralegal
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